

(2010) 10 JH CK 0031
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3846 Of 2010

Madhu

APPELLANT

Vs

Vs State Of Jharkhand

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 23
Constitution Of India, 1950 — Article 342

Citation : (2011) 1 AIR Jhar R 450

Hon'ble Judges : Bhagwati Prasad, C.J;J.C.S. Rawat, J

Bench : Divison Bench

Final Decision : Allowed

Judgement

1. The present writ petition has been filed by the petitioner claiming inter alia that she was born in the State of Jharkhand; her parents are from the erstwhile State of Bihar. Prior to the bifurcation of the State of Bihar in two States, i.e. the State of Bihar and the State of Jharkhand, the father of the petitioner was posted in Bokaro Steel City, Bokaro. Thus, for all intent and purposes, the petitioner is a bona fide resident of the State of Jharkhand, because by virtue of bifurcation of the State of Bihar, it cannot be said that the father of the petitioner is one, who migrated to Jharkhand from Bihar.
2. As aforesaid, migration cannot be an issue, in question in this case. What is pertinent is that prior to bifurcation. Bihar and Jharkhand were an integrated State. In that view of the matter, the so-called migration which is being considered against the petitioner, cannot be considered to be relevant at all, inasmuch the parents of the petitioner had all along been a resident of Bihar while the State was the integrated State. The father of the petitioner joined service in Bokaro Steel City. This cannot be considered to be an

element of migration. When the State bifurcates, the residents of the State get the benefits of migratee State because it was not on account of the acts of the residents, but on consideration of the administrative nature that the bifurcation takes place. On that count, the petitioner's relief for grant of Scheduled Caste Certificate of a Scheduled Caste category in the State of Jharkhand cannot be denied to the petitioner. The question of grant of a Scheduled Caste Certificate to the petitioner is the only question which has been pressed on behalf of the petitioner and the other questions which were raised, were not pressed for consideration.

3. Further, the case of the petitioner is that after the reorganization of the State, in terms of the memo No. 5Vividh092001 (domicile) Karmik, 2691Ranchi dated 29-4-2002, the caste of the petitioner, which is 'paasi' has been declared Scheduled Caste in the State of Jharkhand as well.

Notwithstanding this notification, the petitioner being 'paasi', a scheduled caste in the State of Bihar which is the parent State of Jharkhand, the advantage of that situation should continue to obtain in favour of the petitioner as contended on behalf of the petitioner.

4. The claim of the petitioner has been contested on behalf of the respondents, who claim that in view of the State Government notification dated 12-

7-2005 which is based upon a letter of the Union Government dated 22-3-1977, which envisages that a person belonging to a particular reserved

category of one State would not get the benefit of the State where he migrates and for this purpose, the issue will have to be adjudicated in terms of

the notification dated 18-11-1982 of the Government of India. The argument is further supported by the respondents by the notification of the

Government dated 22-2-1985 produced by the respondents as Annexure B and it is contended that a migratee cannot get the advantage of the State

where he migrates. He can get it only in the State where the father of the petitioner was the resident when the Presidential notification of the year

1950 delineating the Scheduled Caste was issued. The respondents have supported their case in the light of the Supreme Court decision by the

Constitution Bench in the case of Action Committee v. Union of India ((1994) 5 SCC 244) : (1994 AIR SCW 3305). The respondents have further

relied upon the decision rendered in the case of Kavita Kumari Kandhaw v. State of Jharkhand (2006 (2) JCR 512).

5. We have heard the learned counsel for the parties and have given our thoughtful consideration. In view of the law laid down by the Hon'ble

Supreme Court and the case of Marri Chandra v. Dean, SGS Medical College reported in (1990) 3 SCC 130 and the case reported in (1994) 5 SCC

244 : (1994 AIR SCW 3305) (supra), it is clear that a migratee would not be able to get the benefit in the migrated State. In the view of the matter, the

issue can be said to be settled that the migratee State would not be the State where a candidate can ask for reservation.

6. The case in hand has distinguishable features as the petitioner was the resident of Bihar when the reorganization of the State of Bihar had not taken

place. The birth of the petitioner took place at Bokaro which on re-organization, came within the State of Jharkhand.

7. In the instant case, it is not the case where migration can be considered to be an issue. It is a case where the State stood bifurcated and the caste

of the petitioner has been considered to be a Scheduled Caste in the State of Jharkhand by virtue of the notification of the State of Jharkhand. The

petitioner being natural born resident of Jharkhand and her caste having been recognized as Schedule Caste, it cannot be said that the law as declared

by the Hon'ble Supreme Court in relation to the migratees can be held to be one which will govern the facts of the case in hand.

8. The petitioner has brought to the notice of this Court that the order passed in the year 1950 with regard to the Scheduled Caste was amended and

under Section 23 of the Bihar Re-organisation Act, 2000 was implemented with effect from 15-11-2000 and paasi has been declared a Scheduled

Caste for the State of Jharkhand. Thus, as far as paasi, a scheduled caste, is concerned, the order of the year 1950 came into operation only on and

from 15-11-2000 in Jharkhand and on that day, the petitioner was the resident of the State of Jharkhand. The Hon'ble Supreme Court in the case of

Sudhakar Vithal Kumbhare v. State of Maharashtra ((2004) 9 SCC 481) : (AIR 2004 SC 1036 : 2004 Lab IC 79) was considering the question relating

to the bifurcation and inclusion of the area in another State, migration being not involved in that case, and the Hon'ble Supreme Court in para 5 of the

judgment has observed as under:â?

â??5. But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the

Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several

States. They require protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on

equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a

Scheduled Tribe known as HalbaHalbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra

having their origin in Chhindwara region, a part of which, on States' re-organisation, has come to the State of Maharashtra was entitled to

the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution

of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled

Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State

whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe

belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is

recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of

a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States

Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter

which requires detailed investigation having regard to the fact that both Pandhuma in the district of Chhindwara and a part of the area of

Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally

stood the tribe HalbaHalbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various

elements which constitute the input for specification may not be totally different and the State of Maharashtra even after re-organisation

might have agreed for inclusion of the said tribe HalbaHalbi as a Scheduled Tribe in the State of Maharashtra having regard to the said

fact in mind.â??

9. In the facts and circumstances of the case, as aforesaid, we are of the considered view that the petitioner being a resident of the original State of

Bihar, it cannot be considered that her father migrated to the State of Jharkhand, inasmuch as the father of the petitioner has settled in Bokaro prior to

the reorganization of the State of Bihar, and in that view of the matter, it was for the administrative reasons that the State of Jharkhand was created

and the petitioner became the resident of the State of Jharkhand. This fact also cannot be lost sight of that the petitioner was born in Bokaro in the

State of Jharkhand. Her caste â??passiâ?? has been declared to be the Scheduled Caste in the State of Jharkhand. In that view of the matter, we are

of the considered view that the petitioner is entitled to be treated as the person belonging to a Scheduled Caste and in that view of the matter, she is

entitled to receive the certificate to that effect from the respondents.

10. With the above observations, this writ petition is allowed to the extent indicated above. The other questions being not pressed are not decided in

this writ petition.

11. Petition allowed.